SUPREME COURT, U. S

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MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1974

No. 74-837

ALEXANDER ERVIN WILLIAMS, a/k/a ALEXANDER ERVIN,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent

****

PETITION FOR WRIT OF CERTIORARI
To the United States Court of Appeals
For the Fourth Circuit

****

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To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States.

Alexander Ervin Williams, the petitioner herein, prays that a writ of certiorari issue to review the judgment of the United States District Court for the Eastern District of North Carolina on April 26, 1974, affirmed by the United States Court of Appeals for the Fourth Circuit by per curiam decision on November 4, 1974.

OPINIONS BELOW

The opinion of the United States District Court for the Eastern District of North Carolina, which is unreported, is

printed in Appendix A hereto, page 11. The decision of the United States Court of Appeals for the Fourth Circuit, which is unreported, is printed in Appendix B hereto, page 13.

JURISDICTION

The judgment of the United States District Court for the Eastern District of North Carolina (Appendix A, infra, page 11) was entered on April 26, 1974, and affirmed by decision of the United States Court of Appeals for the Fourth Circuit (Appendix B, infra, page 13) made on November 4, 1974. An order granting an extension of time within which to petition for certiorari until January 2, 1975 was issued by this Court on December 12, 1974 and is printed in Appendix C hereto, page 15 . Jurisdiction of this Court is invoked under Title 28, United States Code, Section 1254 (1), petitioner having asserted below rights and privileges conferred by the Constitution of the United States.

QUESTIONS PRESENTED

1. In a joint trial of two co-defendants, does exclusion by the Court of testimony by one co-defendant, such as would tend to show that he made a statement to State officers, with the expectation that it would not be used against him, amount to prejudicial error as to the other co-defendant?

2. In a joint trail of two co-defendants, where one co-defendant enters a

plea of guilty and testifies for the prosecution, does prejudicial error arise from the Court's failure to instruct the jury as requested by the other co-defendant's counsel to the effect that in evaluating the credibility of testimony by the testifying co-defendant the jury should consider his guilty plea and interest in the event?

3. In any event, in a joint trial of two co-defendants, where one co-defendant enters a plea of guilty and testifies for the prosecution, where the Court sustains an objection to cross-examination regarding his expectation of immunity from possible prosecution, or other favorable treatment, in return for evidence provided against the other co-defendant; and where the Court denies a request for special instruction to the jury regarding evaluation of testimony by an accomplice does the combined effect amount to prejudicial error shown in the record as a whole?

UNITED STATES CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States:

AMENDMENT VI

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be

confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

STATEMENT OF THE CASE

Petitioner was apprehended in the company of one Howard Ray Reeder by officers of the State of North Carolina. At the time of his arrest, Reeder voluntarily surrendered a quantity of heroin to officers. Subsequently, Petitioner and Howard Ray Reeder were charged with knowingly, willfully and intentionally possessing with intent to distribute a controlled substance in violation of Title 21, United States Code, Section 841 (a)(1). Petitioner and Howard Ray Reeder were tried together. Howard Ray Reeder pled guilty and testified in the trial to the guilt of Petitioner. Petitioner was convicted.

On cross-examination Howard Ray Reeder testified before the jury that he was not testifying as a government witness in order to help him on a leniency of a sentence, that he was not testifying to obtain leniency from the Court and from prosecution (immunity from) in the State Court; that he had not been offered any leniency at all or any immunity from prosecution. Whereupon, counsel for Petitioner sought to cross-examine Howard Ray Reeder concerning a preliminary remark by his counsel, in a

written statement given by Reeder to a member of the District Attorney's Office of the State of North Carolina. The remark made to the official of the State by counsel for Howard Ray Reeder, which Petitioner's counsel sought to elicit by cross-examination was: ". . . it is understood, of course, that any information given in this interview will not be used in any way against Mr. Reeder." Objection to such cross-examination was sustained by the Court and Petitioner excepted.

Following instructions to the jury by the Court, counsel for Petitioner requested additional instructions as to accomplice testimony and the Court denied the request. Petitioner again took exception.

The Court's instruction included the following:

> "You as jurors are the sole judges of the creditability of the witnesses and the weight their testimony deserves. You should carefully scrutinize the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to indicate whether the witness is worthy of belief. Consider the witness' intelligence, motive, and state of mind, and his demeanor and manner while on the witness stand. Consider also any relation each witness may bear to either side of the case,

> the manner in which each witness might be affected by the verdict, and the extent to which, if at all, each witness is either supported or contradicted by other evidence."

The request for additional instruction, which was denied by the Court, pertained to Accomplice Testimony and read as follows:

> "The Court instructs you that in passing upon the testimony of Howard Reeder you should scrutinize it closely, whether it is supported or unsupported, and you should only believe the same, if you do believe it, after careful and cautious consideration with the fact that he, Howard Reeder, is interested in the event, and with the further fact that he himself, upon his own admission is guilty as an accomplice of the crime charged against the Defendant, Alexander Williams."

The jury returned a verdict of guilty, as to the Petitioner, timely notice of appeal was filed and the United States Court of Appeals for the Fourth Circuit heard oral arguments on October 1, 1974 and affirmed Petitioner's conviction by per curiam decision on November 4, 1974.

REASONS FOR GRANTING THIS WRIT

(1) <u>The Trial Court committed prejudicial error when it sustained objection</u>

to cross-examination by counsel for Petitioner which would have shown motive in the form of the expectation of immunity from prosecution by the State, or other favorable treatment, in consideration for testimony against the Petitioner and the decision of the Appellate Court, affirming Petitioner's conviction conflicts with decisions of this Court on the Sixth Amendment right to confront witnesses.

Howard Ray Reeder's testimony was crucial to the government's case against the Petitioner; all the direct evidence was found upon the person of Reeder and his testimony was the connecting link between that evidence and the Petitioner which led to conviction. As this court recognized in Davis v. Alaska, --U.S.--, 39 L.Ed. 2nd 347, 94 S. Ct.____ (1974), the Sixth Amendment to the Constitution guarantees the right of an accused in a criminal prosecution to "be confronted with the witnesses against him" and"confrontation" means more than being allowed to confront the witness physically.

In Alford v. United States, 282 U.S. 687, 75 L.Ed. 624, 51 S.Ct. 218 (1931) it was held that prejudicial error resulted where the trial court refused to allow a witness for the prosecution to be asked, "Where do you live?" where the purpose of the inquiry was to show, by such facts as proper examination might develop, that his testimony was biased because given under promise or expectation of immunity . . .

Petitioner contends he was denied effective confrontation of the witness, Howard Ray Reeder, because counsel was not permitted to develop cross-examination to bring before the jury self-serving motives for testimony against Petitioner; and that such was highly prejudicial for the reason that Howard Ray Reeder was permitted to testify that he had no expectation of any leniency or any immunity and Petitioner was denied opportunity to effectively impeach this testimony.

(2) The decision of the United States Court of Appeals for the Fourth Circuit conflicts with decisions of other United States Court of Appeals pertaining to the necessity for special instructions regarding accomplice testimony.

Howard Ray Reeder had a definite interest in testifying against Petitioner for he was under indictment by the State of North Carolina for conspiracy and possession of heroin with intent to distribute, and he had yet to be sentenced following his plea of guilty to the charges before the court trying the Petitioner.

Petitioner contends that Howard Ray Reeder was the sole government witness connecting Petitioner to the purchase, transportation or possession, or even with any knowledge, of the heroin surrendered from Mr. Reeder's possession; hence his testimony was crucial to the governments case.

In Dunn v. United States, 318 F2d 89 (1963), the United States Court of Appeals for the Fifth Circuit held that it constituted reversible error to refuse to give a cautionary instruction as to accomplice testimony. In United States v. Davis, 439 F2d 1105 (1971), the United States Court of Appeals for the Ninth Circuit held that it was prejudicial error for the trial judge to refuse to grant a cautionary instruction as to accomplice's testimony where (1) a prosecution against the accomplice was still pending, (2) the accomplice's attorney had talked to the prosecuting attorney about the disposition of his case, (3) the accomplice hoped that by testifying, as he did, against the defendant, he would be helped in his own pending case, (4) the accomplice gave contradictory stories in an apparent attempt to inculpate the defendant rather than himself, and (5) the defendant's guilt rested almost entirely upon the accomplice's testimony.

Relating the criteria in Davis to Howard Ray Reeder's circumstances as he testified against the Petitioner, (1) a prosecution for narcotics violations was still pending; (2) his attorney had discussed the disposition of possible state charges against his client with the state's prosecutor, (3) he had good reason to believe that by testifying against Mr. Williams he would be helped in his own case, (4) from his testimony, it could be inferred that he was attempting to minimize the importance of his role as an accomplice by casting responsibility for initiating, planning, financing and distributing the heroin upon Petitioner,

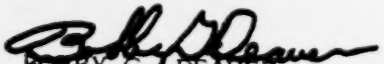
and (5) Petitioner's guilt rested almost entirely, if not entirely, upon Reeder's testimony.

At the least, Petitioner contends that he was entitled to a cautionary instruction that would have alerted the jury to Reeder's interest in testifying against Petitioner and guidelines against which that interest could be measured in assessing Reeder's credibility and that decisions by other Appellate Courts recognizing these rights conflict with the Fourth Circuit decision affirming his conviction.

CONCLUSION

For the foregoing reasons this petition for a writ of certiorari should be granted.

Respectfully submitted,



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APPENDIX "A" TO PETITION

Judgment and Commitment

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA	)	
	)	
v.	)	No. 74-12-Cr-3
	)	FAYETTEVILLE DIVISION
ALEXANDER ERVIN WILLIAMS	)	
	)	

On this 11th day of March, 1974, came the attorney for the government and the defendant appeared in person and by Willis Brown, counsel, entered a plea of not guilty and requested trial by jury.

ON April 24, 25, and 26, 1974 TRIAL BY JURY: With counsel Willis Brown and Bobby Deaver.

IT IS ADJUDGED that the defendant upon his plea of not guilty and a verdict of guilty by the jury, has been convicted of the offense of knowingly, willfully and intentionally possessing with the intent to distribute a controlled substance as defined in Title 21, U.S.C., Section 812, Schedule I(b)(10), said controlled substance being and consisting of approximately 66.9 grams of herion, in violation of Title 21, U.S.C., Section 841 (a)(1), as charged and on April 26, 1974 the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing

to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of twelve (12) years and in addition a special parole term of three (3) years is imposed pursuant to the provisions of Title 21, U.S.C., Section 841(b)(1)(A).

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

s/ALGERNON L. BUTLER
United States District Judge

(SEAL)

s/JOHN R. WHITTY
Clerk

APPENDIX "B" TO PETITION

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

NO. 74-1676

United States of America,

Appellee,

versus

Alexander Ervin Williams,
a/k/a Alexander Ervin,

Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Fayetteville. Algernon L. Butler, District Judge.

Argued October 1, 1974 Decided November 4, 1974

Before BOREMAN and BRYAN, Senior Circuit Judges, and WARRINER, District Judge

Bobby G. Deaver (Brown, Fox and Deaver on brief) for Appellant; Joseph W. Dean, Assistant United States Attorney, (Thomas P. McNamara, United States Attoreny, on brief) for Appellee.

PER CURIAM:

Alexander Ervin Williams, a/k/a Alexander Ervin, and Howard Ray Reeder were charged in an indictment with possession of heroin with intent to distribute in violation of Title 21 U.S.C. Section 841 (a)(1). Reeder entered a plea of guilty to the charge and Williams was tried and convicted by a jury on his plea of not guilty.

Upon consideration of the record, the briefs and appendices, and arguments of counsel we find no reversible error. The judgment of conviction and sentence of appellant Williams will be affirmed.

Affirmed.

In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-837

ALEXANDER ERVIN WILLIAMS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner contends (1) that the trial judge erred when he restricted petitioner's cross-examination of a government witness relating to that witness's possible expectation of immunity from a state prosecution, and (2) that the trial judge erred when he failed to give a special instruction to the jury regarding accomplice testimony.

Following a jury trial in the United States District Court for the District of North Carolina, petitioner was convicted of possessing heroin with intent to distribute it, in violation of 21 U.S.C. 841(a)(1). He was sentenced to twelve years' imprisonment to be followed by a three-year special parole term. The court of appeals affirmed in an unpublished *per curiam* opinion (Pet. App. B).

Approximately one month before petitioner's trial, his co-defendant, Howard Ray Reeder, entered a plea of guilty to the indictment in this case. He then testified for the government at the trial of petitioner. Reeder related that in September 1973 he was introduced to petitioner, who asked him if he had a contact from whom he could purchase heroin (Tr. 12-14). Reeder responded affirmatively and, after checking with his New York source, informed petitioner that the heroin would cost $1,200 an ounce (Tr. 14). The following day, petitioner and Reeder flew to New York, where they purchased $1,200 worth of heroin from Reeder's contact (Tr. 15-17). Petitioner gave Reeder $50 to $100 for his assistance and the expenses of the trip (Tr. 16).

On September 24, 1973, petitioner again requested Reeder to accompany him to New York in order to make a purchase of two ounces of heroin (Tr. 17-18). The following day, they flew to New York where they were again met by Reeder's contact and taken to a bar (Tr. 20). When the contact informed them that the heroin would cost $2,600, petitioner and Reeder went into the bathroom of the bar, and petitioner gave Reeder $2,600 with which to make the purchase (Tr. 21). After petitioner and Reeder rejoined the contact, Reeder gave the contact the $2,600 (*ibid.*). Shortly thereafter, the contact's heroin runner appeared and gave Reeder two ounces of heroin (Tr. 21-22).

Later that evening, petitioner suggested that Reeder carry all the heroin, since there was no need for both of them to be carrying heroin; he stated that if the police approached, he would run and attempt to lead them away (Tr. 24). With Reeder in possession of the heroin, the two returned to the airport and flew back to Fayetteville, North Carolina (Tr. 24-25). Upon deplaning around

10:30 p.m., they were stopped by narcotics agents. Special Agent Walker of the North Carolina State Bureau of Investigation arrested petitioner and searched him pursuant to a warrant he had obtained that afternoon. The search was conducted in Reeder's presence in the office of the airport manager. Thereafter, Reeder was taken into an adjoining bathroom, informed of his rights, and told that the agents did not have a warrant to search him. He stated that he knew what they were looking for, reached into his pants, and brought out two plastic bags, each containing three small bags of heroin. The agents then conducted a further search and placed Reeder under arrest.

Reeder gave two statements to law enforcement officials—one on the date of his arrest and a lengthier statement about ten days later. The latter was given to Assistant District Attorney Ed Grannis in the presence of Reeder's attorney. The first statement dealt with the circumstances of the offense charged here. The subject of the second statement evidently was information that might be useful for a future prosecution for conspiracy to transport narcotics from New York to Fayetteville, North Carolina (Tr. 106). At trial, petitioner's counsel sought to introduce into evidence a short exchange between Grannis and Reeder's attorney at the outset of the second interview, in which Reeder's attorney expressed his understanding that any information given by Reeder during the interview would not be used in any criminal prosecution against him. See Tr. 105-107. Counsel for Reeder objected, and the court sustained the objection.[1]

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[1]The record does not disclose how it came about that the court entertained an objection from the witness's attorney. While this is an unusual situation, the court could have excluded the evidence on its own motion, and the matter has no bearing on the proper disposition of the issue.

1. There is no merit to petitioner's contention (Pet. 6-8) that he was denied the right to effective confrontation of the witness Reeder because counsel was not permitted to develop through cross-examination the self-serving motives for Reeder's testimony against petitioner.

The statement that the trial judge prevented petitioner's counsel from introducing during his cross-examination of Reeder did not show, as petitioner contends (Pet. 7), that Reeder had an "expectation of immunity from prosecution by the State, or other favorable treatment, in consideration for testimony against the petitioner * * *." It reflected only an agreement that, in whatever state prosecution that might be instituted, Reeder's own statements would not be used against him. Indeed, the paragraph in the statement immediately following that offered as evidence by petitioner's counsel contained the following colloquy between Reeder's attorney and the Assistant District Attorney (Gov't. Appendix on Appeal, p. 6):

> (LANE) [Reeder's attorney]. It is understood, of course, that the Assistant U.S. District Attorney has not made any promises with respect to the present case against him. He is making this interview with the full knowledge of a prior statement given by a Mr. Reeder.
>
> (GRANNIS) [Assistant District Attorney]. Yes, sir, o.k.

Thus, the statement sought to be introduced, when read in its entirety, had absolutely no bearing on Reeder's motive to testify or his alleged bias and was thus properly excluded by the trial judge.[2]

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[2]There was no question that the United States had not given immunity to Reeder. He pleaded guilty to the entire indictment, a fact which was brought before the jury (Tr. 11), and he testified that he had not been promised anything by the United States in return for his testimony (Tr. 29, 51).

Moreover, the record demonstrates that petitioner's counsel had ample opportunity to cross-examine Reeder regarding bias and motive. Counsel spent considerable time exposing a number of inaccuracies in the statement that Reeder had given authorities on the date of his arrest (Tr. 75-80). He fully explored the fact that Reeder had been summoned as a witness in the trial against Bobby Hill, Reeder's New York contact (although he did not testify in that trial). Counsel was permitted wide latitude during cross-examination to imply that Reeder had been a narcotics runner for Hill and had engaged in numerous narcotics transactions (Tr. 41-45). He questioned Reeder as to whether state charges were pending against him, the fact that he was arrested by state officers rather than federal officers, and whether he knew there was an indictment returned against him in state court (Tr. 42-43). That any kind of additional material would have added substantially to the impeachment of the witness's credibility by showing bias or motive to lie on the stand is highly speculative, and it is a virtual certainty, as we have shown, that the statement at issue here would not have served that purpose at all.

2. Petitioner also claims that the trial court erred when it failed to give the accomplice instruction that he requested.[3] The judge denied the requested instruc-

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[3]Petitioner's requested instruction read as follows (Pet. 6):

> The court instructs you that in passing upon the testimony of Howard Reeder you should scrutinize it closely, whether it is supported or unsupported, and you should only believe the same, if you do believe it, after careful and cautious consideration, and your consideration of his testimony should be in connection with the fact that he, Howard Reeder, is interested in the event, and with the further fact that he himself, upon his own admission is guilty as an accomplice of the crime as charged against the defendant, Alexander Williams.

tion because he believed he had covered it "generally and * * * adequately" (Tr. 234-235).[4]

The trial judge's decision whether or not to give a particular requested instruction is normally a matter within his discretion. See, *e.g., United States* v. *Nolte*, 440 F.2d 1124, 1126 (C.A. 5); *United States* v. *Becker*, 62 F.2d 1007, 1009 (C.A. 2). Moreover, it is settled that he is not required to accept the language employed by counsel in framing a requested instruction. See *Agnew* v. *United States*, 165 U.S. 36, 51-52; *Wheeler* v. *United States*, 165 F.2d 225, 228 (C.A.D.C.), certiorari denied, 333 U.S. 829. The question whether the trial judge erred by refusing to give a specific requested instruction regarding accomplice testimony must be determined by weighing that refusal against the other circumstances of the case, such as the extent of corroboration of the challenged testimony and the adequacy of the general instruction on credibility. See, *e.g., Jordan* v. *United States*, 345 F.2d 302 (C.A. 10); *Hardy* v. *United States*, 343 F.2d 233 (C.A.D.C.).

Under the facts of the present case, it is clear that there was no prejudice to petitioner's rights from the judge's refusal to give the requested instruction. There was ample testimony before the jury regarding the possible bias or

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[4]The judge instructed the jury (Tr. 225-226) that it "should carefully scrutinize the * * * circumstances under which each witness has testified, and every matter in evidence which tends to indicate whether the witness is worthy of belief [and] * * * [c]onsider each witness' * * * motive * * * and also any relation each witness may bear to either side of the case, the manner in which each witness might be affected by the verdict, and the extent to which if at all each witness is either supported or contradicted by other evidence. * * * [A] witness may be discredited or impeached by contradictory evidence or by evidence that the witness has been convicted or admits the commission of a felony."

improper motive of Reeder, as well as his role as an accomplice; his guilty plea and his interviews with the state and local law enforcement authorities were fully explored. Moreover, the judge's instructions to the jury effectively covered credibility and motive and differed only slightly from the substance of so much of petitioner's requested instruction as permissibly suggested to the jury that an accomplice's testimony should be received with caution and scrutinized with care. However, the specific instruction requested by petitioner (see n. 3, *supra*) was not a balanced cautionary instruction regarding accomplice testimony in general but was instead a comment on the credibility of a particular government witness—a comment with which the trial judge apparently did not agree. Accordingly, he was not required to give the instruction as proposed.

Finally, the evidence against petitioner was not simply uncorroborated testimony of Reeder, but it included the seized narcotics, the airline tickets to New York, and petitioner's comings and goings to the airport with Reeder. Under these circumstances, no further accomplice instruction was required.

Nor is there a conflict among the circuits. Differing decisions derive from a largely factual distinction between cases in which accomplice (or paid informer) testimony has been corroborated by other evidence and those in which it has stood as the sole or dominant source of incrimination, in which the status of the witness as an accomplice has been obscured from the jury, or in which the substance of instructions regarding accomplice testimony has not been substantially covered in other instructions. See *McMillen* v. *United States*, 386 F.2d 29, 36 (C.A. 1); *United States* v. *Busby*, 484 F.2d 994, 996 (C.A. 9). Here, the accomplice testimony was corroborated and was not the sole or dominant source of incrimination, the status of Reeder as an accomplice was not

obscured from the jury, and the substance of petitioner's requested instruction was covered in the main charge. In such circumstances, no circuit has held the failure to give a cautionary instruction on accomplice testimony reversible error.[5]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

APRIL 1975.

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[5]There is no conflict between the decision of the court of appeals in this case and the decisions relied upon by petitioner, *Dunn* v. *United States*, 318 F.2d 89 (C.A. 5), and *United States* v. *Davis*, 439 F.2d 1105 (C.A. 9).

In *Dunn*, the Fifth Circuit reaffirmed two of its earlier decisions—*Joseph* v. *United States*, 286 F.2d 468, 469, and *Phelps* v. *United States*, 252 F.2d 49, 53—in which it had held that the failure to give a specific cautionary instruction on accomplice testimony "is often not reversible error," noting that whether there is reversible error "depends on the circumstance of each case and the conduct of the trial as a whole" (318 F.2d at 93). The particular circumstances in *Dunn* made the failure to give a cautionary instruction reversible error: the entire case rested on the uncorroborated testimony of an accomplice, and the jury, before returning a verdict, had reported that it was hopelessly deadlocked.

Nor is *United States* v. *Davis*, *supra*, in direct conflict with the court of appeals' decision here, for the court in *Davis* held only (439 F.2d at 1107):

> * * * [W]here, as in this case, the instruction is requested and where the guilt of the defendant rests almost entirely upon the testimony of an accomplice and where, as here, such accomplice has given contradictory stories in an apparent attempt to inculpate a defendant, the failure of a court to give a cautionary instruction is error, prejudicial to the appellant and justifies a reversal of his conviction. [Footnote omitted.]

Here, of course, Reeder had not given "contradictory stories in an apparent attempt to inculpate" petitioner, but had consistently given the same account of the events in question. Nor did petitioner's conviction rest entirely on Reeder's testimony.